

SEP 12 2008

The Proscenium, Suite 1900  
1170 Peachtree Street, NE  
Atlanta, GA 30309-7675

Attorney Docket No.: 6770200-0001

## FACSIMILE COVER SHEET

Roberta L. Hastreiter  
Phone: (770) 410-1244  
Fax: (770) 410-1877  
rhastreiter@lockelord.com

To:	Organization:	Fax Number:	Phone Number:
Examiner William P. Fletcher, III	U.S. Patent and Trademark Office	(571) 273-8300	(800) 786-9199

Total Pages: 6 (including cover sheet)  
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Applicants: Jon Lee Curzon et al.	)	Title: Flame Retardant and Microbe
	)	Inhibiting Methods and Compositions
Patent Application No.: 10/805,089	)	
	)	Group Art Unit: 1792
Filing Date: March 19, 2004	)	
	)	Examiner: William P. Fletcher, III

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## Response to Second Restriction Requirement



Roberta L. Hastreiter  
Locke, Lord, Bissell & Liddell LLP  
Reg. No. 32,990  
Customer No. 38226

September 12, 2008

Date

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6770200-0001

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Jon Lee Curzon et al.	)	<u>CERTIFICATE OF TRANSMISSION BY FACSIMILE</u>
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	)	
Group Art Unit: 1792	)	<u>Roberta L. Hastreiter, Reg. No. 32,990</u>
	)	(Typed or Printed Name of Person Transmitting)
Examiner: William P. Fletcher, III	)	<u>Roberta L. Hastreiter</u>

RESPONSE TO SECOND RESTRICTION REQUIREMENT

Hon. Director of the United States Patent and Trademark Office  
Attention: Commissioner for Patents  
P.O. Box 1450, Alexandria, VA 22313-1450

Dear Sir:

The claims and species elections, and remarks, that are presented herein are in response to Examiner Fletcher's office communication having a mailing date of August 26, 2008 ("the Second Restriction Requirement") for the above-identified patent application ("the application"). The Second Restriction Requirement involved a restriction and/or election requirement in connection with claims 1-82 of the application, and an election of species requirement in connection with: (a) an alkaline metal inorganic salt; (b) a potassium salt of an organic acid; (c) a boron containing compound; (d) a surfactant; (e) a microbe inhibiting compound; and (f) a detection compound.

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**Election of Invention**

In the Second Restriction Requirement, the examiner required a restriction to one of the following inventions under 35 U.S.C. §121:

- I. Claims 1-39 and 82, drawn to a composition, classified in class 106, subclass 15.05+;
- II. Claims 40-77, drawn to a method, classified in class 427, subclass 402;
- III. Claims 78-81, drawn to a method, classified in class 427, subclass 402.

The examiner stated (pages 2-3) that the inventions are distinct, each from the other, because: (i) inventions I, II and III are related as product and process of use, the composition can be used to practice a different method, and the method can be practiced with a different composition; (ii) inventions II and III are unrelated because they are not disclosed as capable of use together, and have different modes of operation because the method of claim 78 requires elements that the method of claim 40 does not; and (iii) there would be a serious search and examination burden if restriction were not required.

In response to this Second Restriction Requirement, Applicants hereby elect to prosecute Group I, claims 1-39 and 82.

**Election of Species**

In the Second Restriction Requirement, the examiner also required an election of species to be examined. The examiner stated (pages 4-5) that the application contains claims directed to the following patentably distinct species:

- A. for the alkaline metal inorganic salt, one of the compounds listed in claims 20, 28, 45 and 54-55;
- B. for the potassium salt of an organic acid, one of the compounds listed in claims 21, 29, 46 and 54-55;
- C. for the boron-containing compound, one of the compounds listed in claims 22, 30, 49 and 54-55;
- D. for the surfactant, one of the compounds listed in claims 23, 31, 50 and 54-55;

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- E. for the microbe-inhibiting compound, one of the compounds listed in claims 24, 25, 34, 51, 52 and 54-55; and
- F. for the detection compound, one of the compounds listed in claim 26, 27, 32, 33, 53 and 54-55.

The examiner stated (page 5) that the species are independent and distinct because claims to the different species recite the mutually exclusive characteristics of such species, and these species are not obvious variants of each other based on the current record. The examiner also stated that Applicants are required under 35 U.S.C. §121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable, and that currently claims 1 and 40 are generic. The examiner further stated that there is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The examiner stated that the reply to this requirement to be complete must include: (i) an election of a species to be examined; and (ii) identification of the claims encompassing the elected species.

In response to this election of species requirement, Applicants hereby elect to prosecute the species identified in the table below.

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Election of Species

<u>Category of Species</u>	<u>Species Elected</u>	<u>Elected Claims (Group I) Naming Elected Species</u>
Alkaline Metal Inorganic Salt	Potassium Carbonate	20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39
Potassium Salt of an Organic Acid	Potassium Acetate	21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39
Boron-Containing Compound	Potassium Tetraborate	22, 23, 24, 25, 27, 28, 29, 30, 34, 35, 36, 37, 38, 39
Surfactant	Isodecyloxypropyl Dihydroxy Methyl Ammonium Chloride	23, 24, 25, 27, 28, 29, 30, 31, 33, 34, 35, 37, 38, 39
Microbe-Inhibiting Compound	2-Pyridinethiol-1-Oxide, Sodium Salt (Sodium Pyrithione)	24, 25, 27, 28, 29, 30, 31, 33, 37, 38
Detection Compound	Boron-Containing Compound (Preferably Potassium Tetraborate)	26, 27, 28, 29, 30, 31, 32, 33

Applicants submit that *each* of elected claims 1-39 and 82 (Group I) of the application "encompasses" *each* of the compounds that are identified in the middle section of the table above. The claims of elected Group I that "name" the compounds that are identified in the middle section of this table (often as a result of a dependency) are listed in the right section of this table.

In accordance with 37 CFR 1.141, upon the allowance of a generic claim, Applicants request consideration of claims *to additional species* that depend from, or otherwise require, all of the limitations of an allowable generic claim.

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The elections above do not change the inventorship with respect to either: (i) the elected invention; or (ii) the elected species. Thus, Applicants will not be amending inventorship under 37 C.F.R. §1.48(b).

In accordance with the examiner's statements in the Second Restriction Requirement (page 7), Applicants hereby request that any process claims that may be withdrawn by the examiner as a result of the Second Restriction Requirement and election of claims for prosecution be considered for rejoinder.

Any fees that may be required for the proper filing of this Second Response to Restriction Requirement with the U.S. Patent and Trademark Office ("Patent Office") are hereby authorized to be deducted by the Patent Office from Deposit Account No. 122144.

Respectfully submitted,

LOCKE, LORD, BISSELL &amp; LIDDELL LLP



Roberta L. Hastreiter  
Registration No. 32,990

September 12, 2008

LOCKE, LORD, BISSELL &amp; LIDDELL LLP

Customer Number 38226

111 South Wacker Drive

Chicago, Illinois 60606

Telephone: (770) 410-1244; (312) 443-0700

Facsimile: (770) 410-1877; (312) 443-0336